IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Durgadas
Vs.
The Director Jan Shiksha Avam
Vikas Sangthan & Anr.

S.B. CIVIL WRIT PETITION NO.4737/2002
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 29th August, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.R.S. Saluja, for the petitioner.
Mr.Mahesh Bora, for the respondents

BY THE COURT

In this award the appropriate Government made a reference to the learned Tribunal on an industrial dispute whether removal of the petitioner workman by the respondent-management from his services w.e.f. 18th March, 1989 was legal and justified and if not, what relief the respondents was entitled

to. The reference in fact was made by the order of appropriate Government dated 29th March, 1993. The learned Tribunal passed an award on such a reference on 7th May, 1994. This award was passed ex parte against the management. An application on their behalf was filed before the Tribunal for setting aside such ex parte award, which was eventually accepted on 18.03.1999 and the management was allowed to file reply to the statement of claim and produce their evidence as well. The subsequent award passed by the learned Tribunal on 24th July, 2000 is the subject matter in the present writ petition.

I have heard Mr.R.S. Saluja, learned counsel for the petitioner and Mr.Mahesh Bora, learned counsel for the respondents.

Mr.Saluja, learned counsel for the petitioner-workman has argued that even though the affidavit of the workman was already filed prior to passing of the earlier award, the learned Tribunal while passing the impugned award has completely ignored the same and has recorded a erroneous finding that inspite of several opportunities, no evidence was produced by the workman. He has referred to the order-sheets of the learned Tribunal in the concerned matter for the period from 16.04.1993 to 24.07.2000. With the help of these order-sheets, he explained that the matter was adjourned on number of dates on request of the parties for the reason that there was possibility of

compromise, which in fact never came out. It has been argued that when the matter was revived upon the acceptance of the application of management for setting aside the ex parte award, the proceedings should have been re-initiated from the stage immediately before passing of the earlier award. When the affidavit of the workman was available on record, the representative of the management ought to have been first called upon to cross-examine him on such affidavit and then only the learned Tribunal should have proceeded. The workman on his affidavit proceeded to allow the representative of the workman to cross-examine the witnesses of the management on their affidavit. He further argued that learned Tribunal has committed serious illegality in completely ignoring the evidence of the workman while passing the impugned award whereas this very evidence formed basis of the earlier ex parte award passed by the learned Tribunal.

On the other hand, Mr.Mahesh Bora, learned counsel for the respondent argued that after revival of the proceedings before the learned Tribunal, the petitioner-workman did not attend the proceedings on various dates and therefore the learned Tribunal was justified in allowing the respondents to file their affidavits. If the petitioner was not subjected to cross-examination on his affidavit, he is to blame himself for such a lapse, because he never raised any objection before the learned

Tribunal to this effect. The learned Tribunal has followed the Rules of procedure and has even allowed the petitioner to cross-examine the witnesses of the management. It is therefore, prayed that the writ petition may be dismissed.

I have considered the arguments advanced by both the learned counsel for the parties and perused the records.

It is a fact that an award was earlier passed on 24.07.2000. This was an ex parte award against the management. This award was based on the evidence adduced by the workman, the affidavits and documents filed on behalf of the workman. The Tribunal by this award answered the reference made to it in favour of the workman holding his removal to be illegal and the workman entitled to reinstatement with full back wages. When the ex parte award was set aside on the application of the management, the proceedings stood revived. The learned Tribunal could not have completely ignored the evidence, which was already available on record in the shape of affidavits and documents filed on behalf of the workman. It could not straight away proceed to allow the management to produce its evidence without requiring their representative to cross-examine the workman on the affidavits of the workman. There was no occasion for the petitioner-workman to offer himself for cross-examination as it was the duty of the Tribunal to fix the matter for such cross-examination like it has done n the case of

the witnesses whose affidavits were filed on behalf of the management as would be evident from proceedings of the Tribunal from 29.07.1997 to 26.09.1997. In my view, the learned Tribunal erred in law in holding that no evidence was led on behalf of the workman. Such a finding recorded to this effect clearly reflects non application of mind on its part constituting error apparent on the face of record.

In the result, the award passed by the learned Tribunal dated 24th July, 2000 is set aside with the direction to revive the proceedings and the representative of the management would be on liberty to subject the witnesses of the petitioner-workman to cross-examination. Learned Tribunal thereupon may proceed to hear the workman afresh. Any of the parties may move to learned Tribunal for revival of proceedings by producing certified copy of this order. The learned Tribunal is directed to conclude the proceedings and pass fresh award within a period of six months from the date of production of the copy of this order.

With these observations, the writ petition is allowed. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-